

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MAVERICK TUBE, LP and)	
TUBOS DEL CARIBE, LTDA,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:07 CV 298 DDN
)	
WESTCHESTER SURPLUS LINES)	
INSURANCE COMPANY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER STAYING ACTION

This matter is before the court on the motion of defendant Westchester Surplus Lines Insurance Company to stay, dismiss, or transfer the case to the United States District Court for the Southern District of Texas. (Doc. 8.) The parties have consented to the authority of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Doc. 14.) A hearing was held March 30, 2007. The parties filed post-hearing memoranda.

I. Background

Plaintiffs Maverick Tube, LP (MTLP) and Tubos Del Caribe, LTDA, brought this action for breach of contract and vexatious refusal to pay in bad faith against defendant Westchester. In their complaint, plaintiffs allege that defendant issued to Maverick Tube Corporation two insurance policies: primary policy No. G22033621 for a period of October 1, 2005 until October 1, 2006, amended to October 1, 2005 until January 1, 2007; and an umbrella policy, No. G2198615A 001, for coverage from October 1, 2005 until October 1, 2006, amended to October 1, 2005 until January 1, 2007. Plaintiffs MTLP and Caribe are subsidiaries of Maverick Tube Corporation, and Named Insureds under the policies. (Doc. 1 at 3.)

Plaintiffs allege Caribe manufactures "casings" which MTLP purchases from it. MTLP sold these casings, in turn, to Independent Tubular Corporation, and Independent Tubular then sold these casings to Dominion Exploration & Production, Inc. Dominion used the casings in four separate natural gas wells, and in September 2006, the casings in

the wells broke, and Dominion suffered property damage. Dominion has made a claim for damages against plaintiffs in excess of \$75,000.

Plaintiffs allege that on December 7, 2007, plaintiffs made a written demand to defendant for insurance coverage under the policies. On January 25, 2007, defendant denied coverage.

Defendant moved to stay, dismiss, or transfer plaintiffs' complaint. (Doc. 8.) Defendant argues that it brought a declaratory judgment action concerning the same policies against the parent corporation, Maverick Tube, in the United States District Court for the Southern District of Texas on February 8, 2007, one day before plaintiffs filed their action.¹ Plaintiffs argue that parties in the two lawsuits are not similar, and neither are the issues. Plaintiffs argue that in the Texas case, defendant sued Maverick Tube, the parent company, not MTLP or Caribe. MTLP and Caribe are the parties that manufactured and distributed the casings, and the parties are not substantially similar just because they are subsidiaries. They argue that the issues are different because the issue in the Texas case is whether there is even a case or controversy against Maverick Tube because it was neither the seller or maker of the casings, and it has paid no monies and has not sought indemnification.² Further, they argue that compelling reasons exist for maintaining the action in this forum. (Doc. 15.)

II. Discussion

¹In their response to defendant's motion, plaintiffs allege that they e-mailed Westchester that same day, February 8, 2007, in the morning contesting the denial of coverage. Later that day, Westchester filed suit in Texas. (Doc. 15.)

²Maverick Tube has moved to dismiss the Texas action, Cause No. H-07-0540. It argues that there is no case or controversy between it and Westchester. Further, it argues that because Westchester has denied the claim, a declaratory judgment action is no longer appropriate. Maverick Tube also moved to transfer venue, arguing that the insurance contract was entered into in Missouri, Maverick Tube and MTLP are located in Missouri, Missouri law applies, witnesses are in Missouri, and counsel is in Missouri. (Doc. 15 Attach. 3.)

"The well-established rule is that in cases of concurrent jurisdiction, 'the first court in which jurisdiction attaches has priority to consider the case.'" Northwest Airlines, Inc. v. American Airlines, Inc., 989 F.2d 1002, 1005 (8th Cir. 1993) (quoting Orthmann v. Apple River Campground, Inc., 765 F.2d 119, 121 (8th Cir. 1985); Keymer v. Mgmt. Recruiters Intern, Inc., 169 F.3d 501, 503 n.2 (8th Cir. 1999)). In the absence of "compelling circumstances" the first-filed rule should apply. Northwest Airlines, 989 F.2d at 1005.

Regardless of whether the parties or issues are the same, as plaintiff argues, the court will stay this action 60 days to allow the court in the Southern District of Texas a chance to rule the motion to dismiss pending before it. The ruling on that motion could answer many issues in the current case, such as who the proper parties are and whether Texas is a proper venue. Because the Texas case was filed first, the Texas court should have the opportunity to rule on the questions before it.

Therefore,

IT IS HEREBY ORDERED that the motion of defendant Westchester Surplus Lines Insurance Company to stay, dismiss, or transfer the action (Doc. 8) is sustained in that this action is stayed pending the disposition of motions to dismiss and to transfer currently pending in the United States District Court for the Southern District of Texas in a related action. In all other respects the motion of defendant in this action (Doc. 8) is denied without prejudice.

IT IS FURTHER ORDERED that, on or about the first business day of each month hereafter, the parties shall advise this court of the status of the related Texas action.

_____/S/ David D. Noce
DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed on April 13, 2007.